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SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

LC2012-000070-001 DT 06/18/2012

THE HON. CRANE MCCLENNEN

CLERK OF THE COURT
K. Waldner
Deputy

STATE OF ARIZONA KENT C KEARNEY

v.

DELARNDRUS NASHID SHABAZZ (001) KRISTEN M CURRY

PHX MUNICIPAL CT
REMAND DESK-LCA-CCC

RECORD APPEAL RULING / REMAND

Lower Court Case Number 13878043.

Defendant-Appellant Delarndrus Nashid Shabazz (Defendant) was convicted in Phoenix Municipal Court of disorderly conduct. Defendant contends the trial court erred in denying his Motion for Judgment of Acquittal. For the following reasons, this Court affirms the judgment and sentence imposed.

I. FACTUAL BACKGROUND.

The State charged Defendant with two counts of disorderly conduct, alleged to have been committed on March 24, 2011, and April 1, 2011. Margaret Bruning testified she lived in a condominium complex at 3640 North 38th Street in Phoenix, and was president of the HOA. (R.T. of Aug. 26, 2011, at 4, 12.) In January 2011, Defendant had engaged in a pattern of exposing his bare buttocks to residents there, which offended them, and he had asked Ms. Bruning not to tell his girlfriend about his behavior. (*Id*. at 12–13.) Defendant said he and his girlfriend liked to "spice things up," which is why he would be outside of his condominium naked. (*Id*. at 25.)

At about 9:00 a.m. on March 24, 2011, Ms. Bruning was walking out to the parking lot while wearing high heels that made noise on the sidewalk. (R.T. of Aug. 26, 2011, at 5.) Defendant was standing in the parking lot with his pants far below his buttocks exposing his buttocks. (*Id*. at 6.) As Ms. Bruning was about 30 feet from Defendant, he bent down to touch his feet, thereby exposing his entire uncovered buttocks to Ms. Bruning. (*Id*. at 6–7, 19, 21.) Ms. Bruning told Defendant his pants were very low, and Defendant said he was sorry and pulled them up. *(Id*. at 7–8, 20.) Ms. Bruning said she was alarmed or offended by Defendant's actions. (*Id*. at 10.) Shortly after this event, Defendant sent a text message to Ms. Bruning saying he hoped he did not offend her. (*Id*. at 9–10.)

Nancy Thomas testified she lived in the condominium complex at 3640 North 38th Street in Phoenix. (R.T. of Aug. 26, 2011, at 29.) At about 9:00 a.m. on April 1, 2011, Ms. Thomas was walking her dog in the parking lot while wearing "flip flops" that made noise while she walked. (*Id*. at 29–30, 35.) Defendant had his shorts pulled down below his buttocks with his entire buttocks exposed, and was bending over from the waist. (*Id*. at 30–31.) Ms. Thomas found Defendant's conduct offensive. (*Id*. at 31.) In the evening of April 4, 2011, Defendant spoke to Ms. Thomas about this incident and called her a "fucking bitch" along with a few more expletives. (*Id*. at 33.) Ms. Thomas continued to walk toward her home, but Defendant followed her and continued to address profanities at her. (*Id*. at 34.)

At about 9:45 a.m. on April 1, 2011, Ms. Bruning was again walking out to the parking lot while wearing high heels that made noise on the sidewalk. (R.T. of Aug. 26, 2011, at 13–14.) On that occasion, Defendant again had his buttocks exposed and was squatting down. (*Id*. at 14–15.)

Officer Corey Geffre testified he arrested Defendant on April 20, 2011. (R.T. of Aug. 26, 2011, at 36.) He said Defendant acknowledged being present at each of the incidents. (*Id*. at 37.)

The State then rested, and Defendant's attorney made a motion for judgment of acquittal, contending exposing one's bare buttocks at a woman is not seriously disruptive behavior. (R.T. of Aug. 26, 2011, at 39–41.) After taking a recess and reviewing the authorities submitted, the trial court denied Defendant's motion. (*Id*. at 43–44.) Defendant then rested without presenting any witnesses. (*Id*. at 44.)

The trial court then stated Defendant either knew or should have known what he was doing on each occasion and knew the effect his actions would have on each victim. (R.T. of Aug. 26, 2011, at 48.) The trial court found the victims were offended by Defendant's conduct, and found Defendant guilty of both counts. (*Id*. at 49.) On October 7, 2011, the trial court suspended the imposition of sentence and placed Defendant on summary probation for 2 years. (R.T. of Oct. 7, 2011, at 76–77.) On that same day, Defendant filed a timely notice of appeal. This Court has jurisdiction pursuant to ARIZONA CONSTITUTION Art. 6, § 16, and A.R.S. § 12–124(A).

II. ISSUE: DID THE TRIAL COURT ABUSE ITS DISCRETION IN DENYING DEFENDANT'S MOTION FOR JUDGMENT OF ACQUITTAL.

Defendant contends the trial court abused its discretion in denying his motion for judgment of acquittal. For reviewing a denial of such a motion, the Arizona Supreme Court has said:

> On all such motions, "the relevant question is whether, after viewing the evidence in the light most favorable to the prosecution, *any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." "Substantial evidence," Rule 20's lynchpin phrase, "is such proof that 'reasonable persons could accept as adequate and sufficient to support a conclusion of defendant's guilt beyond a reasonable doubt.' " Both direct and circumstantial evidence should be considered in determining whether substantial evidence supports a conviction.

State v. West, 226 Ariz. 559, 250 P.3d 1188, ¶ 16 (2011) (emphasis original; citations omitted). Defendant was charged with disorderly conduct, which is defined as follows:

> A. A person commits disorderly conduct if, with intent to disturb the peace or quiet of a neighborhood, family or person, or with knowledge of doing so, such person:
>
> 1. Engages in fighting, violent or seriously disruptive behavior . . . .

In the present case, the evidence showed Defendant engaged in intentional behavior. On numerous occasions, Defendant had gone into the public areas of the condominium complex without any clothes on. Defendant knew his conduct was objectionable because he had engaged in a pattern of exposing his bare buttocks to residents there, which offended them, and he had asked Ms. Bruning not to tell his girlfriend about his behavior. On April 1, 2011, Defendant exposed his bare buttocks to Nancy Thomas at 9:00 a.m., and then exposed his bare buttocks to Margaret Bruning at 9:45 a.m. The evidence presented thus showed Defendant was acting intentionally.

The evidence further showed Defendant engaged in seriously disruptive behavior. Right after exposing his bare buttocks to Margaret Bruning, sent a text message to her saying he hoped he did not offend her, indicating he knew his conduct was offensive. Several days after exposing his bare buttocks to Nancy Thomas, he spoke to her about that incident and called her a "fucking bitch" along with a few more expletives, and followed her home and continued to address profanities at her. This evidence showed Defendant knew his behavior would disrupt the lives of these two women, and in fact intended to disrupt their lives. Based on the evidence presented, the trial court did not abuse its discretion in denying Defendant's motion for judgment of acquittal.

Relying on *Julio L.*, 197 Ariz. 1, 3 P.3d 383 (2000), Defendant contends the seriously disruptive behavior has to be the equivalent of fighting or violent behavior. For three reasons, this Court disagrees with Defendant's position.

First, in *Julio L.*, the victim was the director-principal of an alternative middle school for children with behavioral problems, and the juvenile was a 15-year-old with behavioral problems. In viewing the incident in question, the court concluded the State had failed to prove the victim's peace was disturbed. *Julio L.* at ¶ 9. At that point, the court should have ended its opinion having concluded the juvenile did not commit the charged offense. The court did not stop, however, and went into its view of "seriously disruptive behavior." *Julio L.* at ¶¶ 10–14. Because the court had already concluded the juvenile had not committed the charged offense, the subsequent statements about seriously disruptive behavior were dicta.

Second, it appears the Arizona Supreme Court has implicitly overruled *Julio L.* As noted above, the court there held the State failed to prove the peace of the director-principal was disturbed. *Julio L.* at ¶ 9. Less than a year later, however, the Arizona Supreme Court held the State was not required to prove the peace of the person was disturbed:

> However, the statute defining disorderly conduct does not require that one actually disturb the peace of another through certain acts. Rather, the statute requires the commission of certain acts "with intent to disturb the peace . . . or with knowledge of doing so."

State v. Miranda, 200 Ariz. 67, 22 P.3d 506, ¶ 5 (2001). Thus, it appears *Julio L.* is no longer good law.

And third, as discussed by the State, requiring seriously disruptive behavior to be the equivalent of fighting or violent behavior has the effect of making the element of seriously disruptive behavior surplus and redundant. It is the duty of a reviewing court to give meaning to every element of a statute enacted by the legislature, thus seriously disruptive behavior must means something different than fighting or violent behavior. In the present case, the evidence showed Defendant intended to cause a serious disturbing of the peace of the two women by his actions, thus the evidence was sufficient to support the convictions.

III. CONCLUSION.

Based on the foregoing, this Court concludes the trial court did not abuse its discretion in denying Defendant's motion for judgment of acquittal.

IT IS THEREFORE ORDERED affirming the judgment and sentence of the Phoenix Municipal Court.

IT IS FURTHER ORDERED remanding this matter to the Phoenix Municipal Court for all further appropriate proceedings.

IT IS FURTHER ORDERED signing this minute entry as a formal Order of the Court.

/s/ Crane McClennen
THE HON. CRANE MCCLENNEN
JUDGE OF THE SUPERIOR COURT

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